



POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :
- against - : FINAL
Sergeant Terrence Lebby : ORDER
Tax Registry No. 936924 : OF
Fleet Services Division : DISMISSAL
-----X

Sergeant Terrence Lebby, Tax Registry No. 936924, Shield No. 2700, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2014-12194, as set forth on form P.D. 468-121, dated August 17, 2015, and after a review of the entire record, has been found Guilty as charged of Specifications 1 and 2 and Not Guilty of Specification 3.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Sergeant Terrence Lebby from the Police Service of the City of New York.


WILLIAM J. BRATTON
POLICE COMMISSIONER

0001 hrs., October 9, 2015

EFFECTIVE:



POLICE DEPARTMENT

September 29, 2015

-----X
In the Matter of the Charges and Specifications

: Case No.

- against -

: 2014-12194

Sergeant Terrence Lebby

Tax Registry No. 936924

Fleet Services Division

:

-----X
At:

Police Headquarters
One Police Plaza
New York, New York 10038

Before:

Honorable Jeff S. Adler
Assistant Deputy Commissioner - Trials

A P P E A R A N C E:

For the Department:

Beth Douglas, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent:

Roger Blank, Esq.
373 Park Avenue South – 6th Floor
New York, NY 10016

To:

HONORABLE WILLIAM J. BRATTON
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

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The above-named member of the Department appeared before me on August 17 and August 18, 2015, charged with the following:

1. Said Sergeant Terrence Lebbby, on or about and between January 24, 2013, and July 24, 2014, did engage in conduct prejudicial to the order, efficiency or discipline of the Department in that Sergeant Lebbby wrongfully did ingest marijuana without police necessity or authority to do so. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Sergeant Terrence Lebbby, on or about and between January 24, 2013, and July 24, 2014, did engage in conduct prejudicial to the order, efficiency or discipline of the Department in that Sergeant Lebbby wrongfully did possess marijuana without police necessity or authority to do so. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

3. Said Sergeant Terrence Lebbby, on or about and between January 24, 2013, and July 24, 2014, did engage in conduct prejudicial to the order, efficiency or discipline of the Department in that Sergeant Lebbby wrongfully did did knowingly associate with a person reasonably believed to be engaged in, likely to engage in, or to have engaged in criminal activities. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

The Department was represented by Beth Douglas, Esq., Department Advocate's Office, and Respondent was represented by Roger Blank, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Specification 1: Respondent is found Guilty.

Specification 2: Respondent is found Guilty.

Specification 3: Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

Background

Respondent was randomly screened for drugs on July 24, 2014. Officer Sandro Scacchi at the Medical Division collected three hair samples from Respondent: these samples were a mix of Respondent's underarm and pubic hair. The samples were each packaged, and two of the samples were sent to Psychomedics Corporation ("Psychomedics"), a drug testing laboratory in California. As per Department policy, the third sample was stored at the Medical Division; in the event that the first two samples tested positive, Respondent could send the third sample to a lab of his choosing for independent testing. Psychomedics notified the Department that Respondent's two hair samples tested positive for marijuana. There was no testimony at the trial as to whether the third sample was ever tested.

The Hair Sample Collection

Officer Scacchi, who has been certified by Psychomedics for the collection of hair samples, testified that he has been working in the drug screening unit for 11 years, and that he collects samples from approximately seven subjects a day. On July 24, 2014,

Respondent appeared at the Medical Division for a random drug test, and filled out and signed a drug screening questionnaire (Dept. Ex. 1). On that questionnaire, Respondent indicated that he had not taken any prescription medication in the past three months. Officer Scacchi acknowledged that he did not have Respondent's medical file at the time, and was unaware of any prior medical issues Respondent might have had. (Tr. 54-55) Officer Scacchi also completed two "custody and control forms" for the hair samples, on which Respondent was identified by donor identification number 10-2808-14-XH. (Tr. 23-27; Dept. Exs. 2-3)

According to Officer Scacchi, he followed standard procedures when collecting Respondent's hair samples in the hair testing room that day. He wiped down the table with alcohol and then covered it with medical paper prior to the hair sample collection. (Tr. 28) Since Officer Scacchi determined that Respondent's head hair was not long enough for a viable sample, he shaved Respondent's underarm hair onto the medical paper with a new razor. However, Officer Scacchi concluded that there wasn't a sufficient amount of hair from Respondent's underarm, only about 65% of what was needed, so he also had Respondent shave an additional amount of hair from his pubic region, which was then added to the underarm hair sample. (Tr. 31-34, 48)

In Respondent's presence, and with gloved hands, Officer Scacchi then separated Respondent's hair into three equal samples, wrapped each sample separately in aluminum foil, and placed each of the samples into its own sealed hair collection package. Each of the three packages included a white envelope called an "acquisition card" which was initialed by Respondent, and Respondent also signed a "Donor Certification" on the two Custody and Control forms, certifying that the sealed samples were his, that the hair was

cut close to the skin, and that he "witnessed the sample collector seal the sample in the envelope." (Tr. 35-36, 39; Dept. Exs. 2-3)

After packaging Respondent's hair samples, Officer Scacchi then placed these samples into a metal locker within the Drug Screening Unit for temporary storage. The Temporary Storage Log (Dept. Ex. 4) indicates that the samples were placed in the locker at 1044 hours. (Tr. 40-43)

Sergeant Michael Reese testified that he's a supervisor in the drug screening unit and has been with the Medical Division for 14 years. According to Sgt. Reese's review of the records, Respondent's three samples were removed from the locker at the end of the day; two of the samples were then placed in Federal Express packaging and brought to a secure locker in the sick desk area where there is 24-hour supervision. (Tr. 58-61, 73) The Record of Transmittal, Way Bill, and Command Log Entry (Dept. Exs. 5-7) indicate that the next day, July 25, 2014, those two samples were sent by Federal Express to Psychemedics for testing, while the third sample was retained and stored at the Medical Division's sick desk for possible future testing. (Tr. 58-59) Sgt. Reese acknowledged that he had no personal involvement in the handling of Respondent's samples, and was testifying based on the general procedures followed and his review of the Medical Division records. (Tr. 79)

The Psychemedics Test Results of NYPD Hair Samples

Dr. Thomas Cairns is the senior scientific advisor and deputy lab director at Psychemedics, an FDA-cleared drug-testing facility located in California that is licensed in New York to perform drug analysis from hair samples. Psychemedics has conducted

over nine million hair tests since 1988. Dr. Cairns is licensed by the New York State Department of Health in forensic toxicology. Both sides stipulated that Dr. Cairns is an expert in the field of forensic toxicology and hair-testing.

Dr. Cairns explained that when marijuana is ingested into the body, the blood stream transmits it to the liver where it is metabolized. The marijuana tetrahydrocannabinol ("THC") is converted into the smaller, water-soluble metabolite, "Carboxy-THC." The blood stream then carries the Carboxy-THC to every hair follicle in the body. The hair traps the Carboxy-THC, which remains in the hair as it continues to grow. In the case of underarm hair, the hair sample records the presence of Carboxy THC for approximately six-to-seven months, while with pubic hair (which grows slower, and therefore has a longer growing phase and dormancy phase) the Carboxy-THC could remain for 12-to-18 months. (Tr. 139-141) According to Dr. Cairns, Carboxy-THC is made in the liver, and is not present in pre-ingested marijuana or in smoke. Therefore, the presence of Carboxy-THC is a unique indicator of ingestion. (Tr. 143)

Dr. Cairns testified that consistent with its standard procedure, the lab first verified that the seals on the sample packages were intact. Psychemedics then separated out a portion of one of the two samples in order to perform a preliminary test: chemical enzymes were used to dissolve the hair into liquid form, thereby releasing any drug that was trapped in the hair. An "immunoassay" test was then performed on this liquid; since the test indicated the presence of Carboxy-THC above the prescribed cut-off point, it was determined to be a "presumptive positive", at which point preparations were made to test the remaining portion of the first hair sample more thoroughly. (Tr. 144)

Dr. Cairns explained that the next step in preparing the hair sample for further testing was a "washing" process, whereby the hair sample went through a multiple-wash procedure spanning just over two hours. The purpose of this washing was to decontaminate the sample, to get rid of externally-applied Carboxy-THC so that the ultimate reading would reflect only the presence of ingested marijuana. (Tr. 145)

The sample was then subjected to a molecular structure test through a technology called "mass spectrometry." The test indicated the presence of Carboxy-THC at a concentration level of 145 picograms per 10 milligrams of hair ("145pg/10mg"), a level well-above the established cutoff level of 1pg/10mg. (Tr. 160) Dr. Cairns explained that the purpose of establishing this cut-off level is to differentiate a multiple user from someone with one-time exposure. This cutoff level was determined through clinical analysis, and was set with a "wide margin of conservatism." (Tr. 147, 160) Indeed, the cutoff level (1 pg/10mg) is twice that of the federally-approved cutoff of 0.5pg/10mg. (Tr. 171)

After the first sample tested positive for marijuana, the second sample also was washed and tested with the mass spectrometry procedure; no preliminary immunoassay test was done with this sample. Dr. Cairns testified that the test of this second sample indicated the presence of Carboxy-THC at a level of 172 pg/10mg. (Tr. 161) Since this result confirmed the positive results from the first sample, Psychemedics reported to NYPD that Respondent had tested positive for marijuana.

According to Dr. Cairns, the readings from these tests indicated that there were "multiple ingestions" by Respondent, with "considerable weekly use" throughout the prior 12-to-18 months. The results revealed that on average, Respondent smoked

marijuana on a weekly basis, probably two or three times per week, throughout that time period (Tr. 165-167) Dr. Cairns clarified that this result did not mean that Respondent did, in fact, smoke every week during that time period; the results only reveal the average ingestion, with no precise indication as to how that ingestion was distributed over the look-back period. (Tr. 166-167)

Dr. Cairns estimated that Psychemedics performs three-to-five thousand hair tests each day. There are approximately 100 employees who perform these tests. (Tr. 183-184) Dr. Cairns acknowledged that he was not present for the testing done in this case, and had no first-hand knowledge that the correct procedures were followed by the Psychemedics employees. (Tr. 190-191, 193-194) Instead, he relied upon his review of the "Laboratory Data Package" (Dept. Ex. 8), which he prepared and certified. (Tr. 154) That package, in which Respondent is identified by his donor identification number, indicated that the chain of custody remained intact during the handling of the hair samples. Dr. Cairns admitted, though, that there was an error in the initial laboratory report; apparently, the certifying scientist was unaware that there was a mixed sample here. Based on this inaccurate report, Dr. Cairns initially also mistakenly believed that only Respondent's armpit hair was used for this testing, and only later learned that pubic hair was used as well. That mistake necessitated redrafting pages 4 and 5 of the laboratory data package, and extended the period of possible ingestion from 6-to-7 months to 12-to-18 months. (Tr. 160-163, 203-209)

Also, Dr. Cairns confirmed that he was familiar with a 2013 case from the Massachusetts Civil Service Commission that involved several Boston Police Department officers who were terminated after testing positive for cocaine; those drug tests were

performed by Psychemedics. The finding there was that hair testing of this type, while useful in some contexts, was not reliable enough to sustain the police department's decision to terminate the officers. (Tr. 136-137, 178) Dr. Cairns also confirmed that under current guidelines of the Substance Abuse and Mental Health Services Administration regarding federally-mandated testing, only urine testing is approved for certain government employees. (Tr. 180-181) He also testified that he was aware that in 2009 the FBI temporarily suspended use of this type of hair testing; however, after doing further analysis of the procedures employed by Psychemedics, the FBI, in August 2014, concluded that the process was, indeed, "100 percent guaranteed, no false positives because of contamination." (Tr. 181, 221)

Internal Affairs Investigation

Sergeant Michael Blackman of the Internal Affairs Bureau ("IAB") testified that after the Department was notified of Respondent's positive drug test results, there was an initial "call-out" investigation, and then the case was assigned to the sergeant to investigate further. Sergeant Blackman reviewed a prior recorded interview of Respondent from August 6, 2014, during which Respondent had stated that he did not smoke or use marijuana, but that he lived with two roommates who smoked on a regular basis. (Tr. 86-87) Sergeant Blackman spoke with the two roommates, Person A and Person B, neither of whom had criminal records. According to Sgt. Blackman, each of them confirmed that they did smoke marijuana at the residence when Respondent was not home, and that Respondent was aware of this. Each also stated that Respondent, himself, did not smoke and told them he could not have them smoking

marijuana around him. They also both stated that they did not prepare any foods that contained marijuana. (Tr. 89-91, 103) In her October 20, 2014 interview, Person B confirmed that she had been dating Respondent; however, since the failed drug test they no longer were involved with each other. (Tr. 90-91) Person A was a roommate who was still living with Respondent at the time she was interviewed by the sergeant on September 19, 2014. (Tr. 88-89)

Sergeant Blackman also testified that he had investigated an allegation Respondent had made that two officers working under Respondent had spiked his coffee with marijuana. According to Respondent's report, two officers he had disciplined with foot-post assignments had brought him coffee one day in late-May 2014; from the intense caffeine-rush, Respondent suspected the coffee may have been drugged, though he did not feel like he was "high." Respondent did not say anything at the time, nor did he mention it in his August 6 interview; Respondent first reported this allegation on August 12. The sergeant separately spoke with each of the accused officers, who confirmed that they had brought coffee to Respondent, but denied drugging the coffee in any way. (Tr. 92-96, 98-99) The sergeant also interviewed Respondent on October 24, 2015, and Respondent acknowledged that he did not make any report to the Medical Division that he might have ingested a controlled substance. (Tr. 97) The sergeant could find no evidence to corroborate Respondent's claim, and dismissed the allegation as unsubstantiated. (Tr. 99)

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

Sergeant Blackman also testified that he conducted a third interview with Respondent on November 17, 2014, at which time he reviewed with Respondent the Department's guidelines regarding criminal association. Specifically, the sergeant instructed Respondent to cease his relationship with Person A and Person B. Sergeant Blackman added that as far as he knew, Respondent was in compliance with his instructions after the November 17 interview. (Tr. 104-106)

Respondent's Testimony

Respondent, who was appointed to the Department in January 2005, testified that he has never smoked or used marijuana. (Tr. 247)

Respondent confirmed that his hair samples were, in fact, collected on July 24, 2014, in the manner described by Officer Scacchi. (Tr. 242, 270) When Respondent learned from IAB that he had failed the test, he informed IAB that he believed he failed because of his exposure to contact smoke. Specifically, Respondent referred to his two roommates who regularly smoked marijuana. Respondent explained that he took in Person A as a roommate around April or May of 2014 because he was going through a divorce at the time and needed some financial help; Respondent did not know Person A before then. For eight months, Respondent also lived with Person B, with whom he had an intimate relationship. Respondent testified that one day he came home and smelled a strong odor of marijuana in the house; he warned Person A and Person B not to smoke in the house when he was around. Respondent stated that they

complied with his wishes; after the warning, he occasionally would come home and smell a small trace of marijuana, but never the strong odor that was present that one day. (Tr. 243-247, 262) After Respondent learned that he had tested positive for marijuana, he immediately ended his relationship with Person B. (Tr. 263) When Respondent was instructed by IAB not to associate with Person A, he gave her 30-days notice as her landlord that she must move out, and she complied. (Tr. 259)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Shortly after his return to duty on May 28, 2014, Respondent felt an unusual caffeine rush after drinking coffee that was brought to him by two officers. At the time, Respondent did not think that he had been drugged and made no report; however, a week after learning of his positive drug test, Respondent made a report to IAB accusing the officers of spiking his coffee with marijuana, in retaliation for a punishment post he had assigned them to months earlier. (Tr. 247-250, 265-270)

FINDINGS AND ANALYSIS

Respondent is charged with possessing and ingesting marijuana without police necessity or authority after a random drug test revealed the presence of marijuana in the hair samples collected by the Department. After evaluating the testimony and evidence presented at the hearing, and assessing the credibility of witnesses, this tribunal finds by a preponderance of the credible evidence that Respondent is guilty of these two specifications. Respondent also is charged with wrongful criminal association; this tribunal finds that the Department failed to prove this specification by a preponderance of the evidence, and finds Respondent not guilty of that charge.

Officer Scacchi testified credibly about how he collected the hair samples from Respondent. Through his cross examination, Counsel for Respondent alertly highlighted that Officer Scacchi's recall of the details of this particular case was suspiciously precise considering the high volume of cases handled by the officer. But otherwise, there was nothing in Officer Scacchi's testimony to cast any doubt on the integrity of the sample collection process here. Respondent's own testimony confirmed that the hair samples were collected and secured in the manner described by the officer.

Similarly, this tribunal found Sergeant Reese to be a credible witness in his description of the handling of the evidence and the chain of custody. Counsel for Respondent did correctly point out that the sergeant, himself, had no actual involvement in the handling of the evidence, and based his testimony on his review of the records. Nevertheless, that testimony was detailed, consistent and persuasive in establishing that the evidence was, in fact, handled properly.

Dr. Cairns, an undisputed expert in forensic toxicology and hair testing, testified credibly about the testing of Respondent's hair samples, and the implications of the results. He provided background information on the reliability of the process itself: he testified about the conservative nature of the 1pg/10mg cutoff level, and convincingly explained how test results above that cutoff point reveal active use of marijuana as opposed to one-time, passive exposure. In this case, Respondent's readings of 145pg/10mg and 172pg/10mg indicated that Respondent was smoking extensively over the prior 18-month period, with multiple ingestions and, on average, considerable weekly use.

Respondent raised several points in his own defense. He challenged the reliability of Psychemedics, which counsel described as a "factory," and suggested that the high volume of tests performed by a limited number of employees in an "assembly line" environment was susceptible to human error. Indeed, counsel did expose that there was a mistake in the handling of this case, as a certifying scientist originally treated Respondent's samples as if they were only from the armpit, before the lab realized the samples included a mix of pubic hair and adjusted its report accordingly. But this tribunal agrees with Dr. Cairns that this mistake did not undercut the validity of the test process itself, or the results.

Respondent also stressed that the validity of Psychemedics' hair testing process has been questioned elsewhere. A 2013 decision by the Massachusetts Civil Service Commission found that Psychemedics' hair testing was not reliable enough to justify the termination of several Boston police officers for alleged cocaine use. However, no specific evidence was elicited here as to why precisely that Commission found

Psychemedics' results unreliable, details which would have enabled this tribunal to assess that decision's applicability to the facts of this case. In the absence of such detail, this tribunal finds no compelling reason for adopting the conclusion of the Massachusetts Commission, and declines to follow that ruling. More persuasive to this tribunal is that the FBI, which temporarily suspended the use of this hair-testing in 2009, did a follow-up evaluation of Psychemedics process, including an assessment of the lab's extensive "washing procedure"; the FBI determined in an August 2014 report that Psychemedics' testing is, in fact, reliable and that the lab's washing procedures eliminate the possibility of false positives.

Respondent also suggested that his negative test results [REDACTED] [REDACTED] contradict Psychemedics' findings of extensive marijuana use over the 18-month period prior to the test of July 24, 2014. Respondent testified to these negative test results, without any supporting documentation. But even assuming the accuracy of this testimony, these negative test results do not undercut the validity of Psychemedics' findings. As Dr. Cairns explained, he was not suggesting that Respondent actually smoked every week during that time period; the test results only revealed Respondent's average ingestion, with no precise indication as to how that ingestion was distributed over the 18-month period.

Aside from challenging the validity of Psychemedics' procedures, Respondent also offered alternative explanations of why he may have tested positive for marijuana. One explanation was that his coffee may have been spiked by disgruntled officers. However, Respondent's delay in coming forward with this purely speculative allegation, casts considerable doubt on its veracity. Moreover, Dr. Cairns testified that even if the

coffee was drugged in the manner described, it would not have led to the high readings in this case. First, at least 50 percent of the marijuana ingested through the stomach would be destroyed by the stomach's enzymes. The remaining amount of Carboxy-THC would be well-below the cutoff of 1pg/10mg. (Tr. 170-171)

Respondent's claim that he was exposed to second-hand smoke from his roommates, Person A and Person B, is similarly unpersuasive. Dr. Cairns explained that inhaling second-hand smoke would not lead to a reading above the cut-off level, let alone the higher readings in this case. First, the smoke itself does not contain Carboxy-THC, so smoke that merely landed outside on a person's body would not yield a positive result for the metabolite. Second, even if that second-hand smoke were breathed in and metabolized by the liver, the purpose of setting the 1pg/10mg cutoff point is to allow for the presence of such smoke without yielding a false positive. (Tr. 167-168) For the same reason, the levels here could not be reached through sexual activity with a user, or through the co-mingling of body hair. (Tr. 168-171)

As such, this tribunal finds that the Department adequately proved the integrity of the sample collection process, that the chain of custody was not compromised, and that Respondent's samples were accurately tested using a New York State licensed and FDA cleared laboratory. The evidence further established through Dr. Cairns' credible testimony, that Respondent's hair samples contained Carboxy THC at a concentration above the administrative cutoff level. See *Matter of McBride v. Kelly*, 215 A.D.2d 161 (1st Dept. 1995) (substantial evidence that officer ingested cocaine was provided by mass spectrometry). In the face of such convincing evidence, this tribunal cannot credit Respondent's self-serving claim that he never smoked marijuana. The Department has

proven its case by a preponderance of the evidence, and I find Respondent guilty of Specifications 1 and 2, in that he wrongfully possessed and ingested marijuana without police necessity or authority to do so.

With regard to the 3rd Specification, the evidence established that Respondent was living with two roommates who he knew to be marijuana smokers. However, other than the one occasion where Respondent came home to the strong smell of marijuana in his home, there was no indication that his roommates ever again smoked in his presence or when he was home. No evidence was presented that either roommate engaged in criminal activity, only that they occasionally smoked marijuana at home, conduct that would be a violation and not a crime. See *Disciplinary Case No. 2009-85743*, signed June 5, 2012 (17-year school safety agent found not guilty of criminal association, where live-in boyfriend once pled guilty to disorderly conduct and where Respondent was aware boyfriend smoked marijuana but never in her presence). Moreover, as soon as Respondent learned of his positive drug test result, he immediately ended his relationship with Person B. And once he was instructed by IAB to discontinue his association with Person A, he immediately gave her the requisite notice to vacate the house and she moved out. Sergeant Blackman testified that as far as he knew, Respondent was in compliance with his order. As such, this tribunal is not persuaded that the Department has met its burden of proving that Respondent knowingly engaged in criminal association, and I find him not guilty of that charge.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of possessing and ingesting marijuana without police necessity or authority. The Department has a strong interest in not employing persons who ingest and possess illegal drugs such as marijuana. Patrol Guide section 205-29, which deals with "Random Drug Screening," clearly states that it is the Department's goal "to ensure that uniformed members of the service do not use illegal drugs/controlled substances."

Several prior cases involving marijuana use have resulted in dismissal. See *Disciplinary Case No. 2014-1216*, signed July 30, 2015 (four-year member with no prior disciplinary record is dismissed for possessing and ingesting marijuana; court rejected Respondent's claim that smoothies containing hemp seeds caused the positive test results); *Disciplinary Case No. 2009-85876*, signed November 10, 2011 (26-year lieutenant with no disciplinary record is dismissed for possessing and ingesting marijuana); *Disciplinary Case No. 2009-85554*, signed January 5, 2011 (16-year member with no prior disciplinary record is dismissed from the Department for possessing and ingesting marijuana; court rejected Respondent's argument that he may have used marijuana during alcohol-induced blackouts).

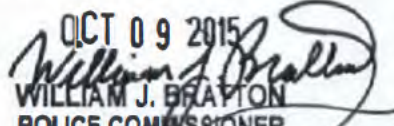
Taking into account the facts of this case, the Department's policy regarding marijuana use, the case precedent, and Respondent's record, I recommend that Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner – Trials

APPROVED

OCT 09 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT TERRENCE LEBBY
TAX REGISTRY NO. 936924
DISCIPLINARY CASE NO. 2014-12194

In his last three performance evaluations Respondent received an overall rating of 2.5 "Below Competent." [REDACTED]

Respondent has no prior disciplinary history however, is currently on modified duty status in regard to these charges. Last, Respondent has received no commendations.

For your consideration.



Jeff S. Adler
Assistant Deputy Commissioner – Trials